THE MANDATORY REFERENDUM ON CALLING A STATE CONSTITUTIONAL CONVENTION: ENFORCING THE PEOPLE'S RIGHT TO REFORM THEIR GOVERNMENT

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I. INTRODUCTION

Included in the constitutions of thirty seven of the fifty states is the bold and provocative manifesto that the people[1] have the right at all times to alter or reform their government.[2] This statement, which found early expression in the Declaration of Independence,[3] is generally considered to be another way of phrasing the principle that ultimate sovereign power is in the people.[4] The direct exercise of sovereignty by the people of a state is, with one exception, limited to voting on statutory or constitutional measures presented through the initiative, referendum or constitutional revision procedures specified in state constitutions. In all other situations the people have delegated their sovereignty to their state government. Even the three acts of popular soveignty listed find their source in the state constitution and not in the inherent power of the people. There is, however, one aspect of sovereignty that does not depend

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25 (1917). *See also* Forkosch, *Who are the "People" in the Preamble to the Constitution*, 19 CASE W. RES. L. REV. 644 (1968).

[1] The definition of "people" is discussed in HOAR, CONSTITUTIONAL CONVENTIONS 16-25 (1917). See also Forkosch, *Who are the "People" in the Preamble to the Constitution*, 19 CASE W. RES. L. REV. 644 (1968).

[2] Alabama, art. I, §2; Arkansas, art. II, §1; California, art. I, §2; Colorado, art. II, §2; Connecticut, art. I, §2; Delaware, Preamble; Georgia, art. I, §2-501; Idaho, art. I, §2; Indiana, art. I, §1; Iowa, art. 1, §2; Kentucky, §4; Maine, art. I, §2; Maryland, Declaration of Rights art. I; Massachusetts, pt. I, art. VII; Minnesota, art. I, §1; Mississippi, art. 3, §6; Missouri, art. I, §3; Montana, art. III, §2; Nevada, art. I, §2; New Hampshire, pt. I, art. X; New Jersey, art. I, §2; North Carolina, art. I, §3, North Dakota, art. I, §2; Ohio, art. I, §2; Oklahoma, art. II, §1; Oregon, art. I, §1; Pennsylvania, art. I, §2; Rhode Island, art. I, §1; South Carolina, art. I, §1; South Dakota, art. VI, §26; Tennessee, art. I, §1; Texas, art. I, §2; Utah, art. I, §2; Vermont, c. I, art. 7; Virginia, art. I, §3; West Virginia, art. 3, §3; Wyoming, art. I, §1. Of the other thirteen states, Alaska, Arizona, Florida, Hawaii, Kansas, Michigan and Washington provide in their constitutions that political power is inherent in the people, Illinois, Wisconsin and Nebraska that government derives its powers from the consent of the governed, Louisiana that government originates from the people, and New Mexico that political power is vested in and derived from the people. In addition, Alaska, Arizona, Florida, Kansas, Louisiana, Michigan, Nebraska, New Mexico, and Washington have constitutional statements that all unenumerated powers are retained by the people. Only New York has no provision that refers to any basic political right existing in the people.

[3] "That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute New Government . . ." Declaration of Independence, par. 2.

[4] Luther v. Borden, 48 U.S. (7 How.) 1, 47 (1849); Gatewood v. Matthews, 403 S.W.2d 716, 718 (Ky. 1966); Wheeler v. Board of Trustees, 200 Ga. 323, 331-33, 37 S.E.2d 322, 328-29 (1946); Staples v. Gilmer, 183 Va. 613, 623, 33 S.E.2d 49, 53-54 (1945); Wells v. Bain, 75 Pa. 39, 46 (1873); HOAR, CONSTITUTIONAL CONVENTIONS 11-15 (1917).

upon the state constitution but, rather, is inherent in the people of a state—the power to revise their form of government by means of a constitutional convention. The state constitutional convention has been described as (in the field of constitution writing) the repository of the sovereignty of the people—an all-powerful body, subject to no limitations except those imposed by the people themselves and by the Federal Constitution.[5] It is through the constitutional convention and the subsequent referendum on its proposals that the people are able to exercise directly their right to alter or reform their government. The constitutional convention has been considered so basic that the power to have a convention has been held to exist even though the state constitution makes no mention of it.[6]

The usual procedure for a state to follow in having a constitutional convention involves (1) a decision by the state legislature to submit the question of calling a convention to the people; (2) a favorable vote by the people; (3) the adoption by the legislature of enabling legislation for the convention including providing for the election of delegates to the convention and funding the convention; (4) the election of the delegates. Under this process the holding of a convention is completely dependent upon the legislature. A number of states have, however, attempted to bypass the legislature by including in their constitutions not only the statement as to the right of the people to change their government but also a requirement that the question of calling a constitutional convention be submitted to the people at specified or minimum intervals. These provisions direct that if the people in a mandatory referendum vote for a convention, a convention be held, and they either are self-executing to the extent that no further legislative action is necessary for a convention to be held, or impose a duty upon the legislature to provide the mechanics for holding a convention. At the present time, there are eleven states[7] with

[5] Anderson v. Baker, 23 Md. 531, 616 (1865) quoted with approval in Board of Supervisors of Elections v. Attorney General, 246 Md. 417, 433-34, 229 A.2d 388, 397 (1967); HOAR, CONSTITUTIONAL CONVENTIONS 128-48 (1917); DODD, THE REVISION AND AMENDMENT OF STATE CONSTITUTIONS 72-117 (1910); Note, *State Constitutional Change: The Constitutional Convention*, 54 VA. L. REV. 995, 1012-16 (1968), Note, *The Constitutional Convention, Its Nature and Powers-And the Amending Procedure*, 1966 UTAH L. REV. 390, 401-09; White, *Amendment and Revision of State Constitutions*, 100 U. PA. L. REV. 1132, 1139-47 (1952); Note, *State Constitutional Conventions: Limitations on Their Powers*, 55 IOWA L. REV. 244, 261-62 (1969). The principal exponent of the contrary view is JAMESON, CONSTITUTIONAL CONVENTIONS 301-28 (4th ed. 1887).

[6] Harvey v. Ridgeway, —— Ark. ——, 450 S.W.2d 281 (1970); Board of Supervisors of Elections v. Attorney General, 246 Md. 417, 229 A.2d 388 (1967); Gatewood v. Matthews, 403 S.W.2d 716 (Ky. 1966), HOAR, CONSTITUTIONAL CONVENTIONS: ch. IV (1917); DODD, THE REVISION AND AMENDMENT OF STATE CONSTITUTIONS 44 (1910); White, *Amendment and Revision of State Constitutions*, 100 U. PA. L. REV. 1132, 1134-35 (1952).

[7] Alaska, Connecticut, Hawaii, Iowa, Maryland, Michigan, Missouri, New Hampshire, New York, Ohio and Oklahoma. Arkansas and Illinois will join the group if the new constitutions adopted by the 1969 Arkansas constitutional convention and the 1970 Illinois constitutional convention are ratified by the voters in November and December, 1970, respectively. In the Appendix there is a state by state listing of the mandatory referendum provision of

mandatory referendum provisions and, in view of the recent spate of constitutional conventions[8] and the trend toward the inclusion by these conventions of the mandatory referendum in state constitutions,[9] it is likely that there will be an increasing number of mandatory elections on the issue of calling a constitutional convention. Whenever the convention issue is submitted pursuant to a constitutional directive but the actual holding of a convention is dependent upon legislative action, there is always the risk that the legislature will not comply with its duty to see that a convention is held. This has, in fact, occurred on several occasions in the past.[10] The question presented by this situation is whether the judicial process is available to force the holding of a convention. Up to the present this issue has never been judicially determined, but the general opinion is that a court in these circumstances is powerless.[11] In this article, the history and use of the mandatory referendum on calling a constitutional convention will be reviewed, the advisibility of the different types of mandatory referendum provisions will be assessed, and an analysis made of the legal theories which are available to provide justification for a court to make effective a vote for a constitutional convention and thus enforce the people's right to reform or alter their government.

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the state constitution, the date of each mandatory submission, the vote at each submission, and a statement as to whether the vote resuled in a convention being held. The states are listed in the order in which they adopted the mandatory referendum.

[8] During the period 1950-65, fifteen constitutional conventions were held. Sturm and Craig, *State Constitutional Conventions: 1950-65*, 39 STATE GOVT. 152, 152-53 (1966). In the past three years Arkansas, Hawaii, Illinois, Maryland, New Mexico, New York, Pennsylvania and Rhode Island have had conventions.

[9] Since 1959 Hawaii, Alaska and Connecticut have included the mandatory referendum in their constitutions. In addition within the last three years constitutional conventions in Rhode Island and New Mexico incorporated a mandatory referendum in their constitutional proposals but in both states the new constitutions were rejected by the voters. The 1969 Arkansas constitutional convention has proposed a constitution with a mandatory referendum and the 1970 Illinois constitutional convention has voted to do likewise. In 1968 Florida adopted a legislatively drafted constitution which authorizes a vote on calling a constitutional convention only when the issue has been put on the ballot by an initiative petition. If the vote is in favor of a convention, the procedure for calling a convention is self-executing and not dependent upon legislative action. Fla. Const. art. XI, §4. The National Municipal League's Model State Constitution also provides for a mandatory submission at least once every 15 years. Model State Const. art. 12, sec. 12.03(a) (6th ed. rev. 1968).

[10] *See infra* at notes 15-17.

[11] "[T]he decision to revise the constitution by means of a convention having been made, it is the legal obligation of the legislature to provide for the holding of the convention. Unfortunately, however, the fact that the people have voted for a convention provides little assurance that the legislature will properly discharge its responsibility, as the experience of Iowa well illustrates. Since the legislature cannot be mandamused, there is apparently no effective legal remedy." GRAVES, AMERICAN STATE GOVERNMENT 71-72 (4th ed. 1953); WHEELER, *Changing the Fundamental Law*, in SALIENT ISSUES OF CONSTITUTIONAL REVISION 59 (Wheeler ed., 1961); STURM, METHODS OF CONSTITUTIONAL REFORM 88 (1954); HOAR, CONSTITUTIONAL CONVENTIONS 71-76, 117-18 (1917); Note, *State Constitutional Change: The Constitutional Convention*, 54 VA. L. REV. 995, 1008 (1968); Note, *The Constitutional Convention, Its Nature and Powers-And the Amending Procedure*, 1966 UTAH L. REV. 390, 397; Dodd, *Judicially Nonenforcible Provisions of Constitutions*, 80 U. PA. L. REV. 54, 78-80 (1931). The only suggestion to the contrary is found in Note, *State Constitutional Conventions: Limitations on Their Powers*, 55 IOWA L. REV. 244, 252-53 (1969).

II. THE CONSTITUTIONAL PROVISIONS

There have been a total of fifteen states which at some time in their history have included in their constitutions a mandatory referendum requirement.[12] Submission of the convention issue pursuant to these provisions has occurred on seventy-two[13] occasions. Twenty-nine times a majority of those voting on the question were in favor of a convention. Of these twenty-nine pro-convention votes, twenty-one have resulted in constitutional conventions being held.[14] In the other eight instances a convention was not called, three times because of an outright refusal on the part of the legislature to pass the necessary legislation,[15] and five times in part because the constitutional provision was read to require a majority voting in favor of a convention greater than a simple majority of those voting on the question.[16] On one other occasion the legislature of New York, after the people had voted for a convention, delayed the holding of a convention for eight years.[17] This could be considered at least a partial non-compliance with the constitional mandate.

Three states adopted their mandatory referendum provisions prior to 1800, three in the period 1801-1850, four from 1851-1900, two more between 1901-1950, and four since 1950.[18] Under the constitutions of the first four of these states, the sole means whereby the constitutions could be revised or amended was by a constitutional convention called pursuant

[12] Alaska, Connecticut, Hawaii, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New York, Ohio, Oklahoma, and Virginia, with Arkansas and Illinois as potential members of this group. For more detailed information as to each state, see the Appendix.

[13] The number of submissions in each state are: Indiana, 2; Iowa, 10; Kentucky, 1 (submissions occurred in 1797 and 1798 but because the issue had to be approved in each year to be effective they are counted as one); Maryland, 4; Massachusetts, 1; Michigan, 7; Missouri, 3; New Hampshire, 30; New York, 5; Ohio, 5; Oklahoma, 3; Virginia, 1. For more detailed information including the dates of the submissions, see the Appendix.

[14] The states in which mandatory referenda have resulted in conventions being held, and the year of each referendum, are: Kentucky, 1797 and 1798; Michigan, 1866, 1961; Missouri, 1921, 1942; New Hampshire, 1850, 1876, 1886, 1900, 1910, 1916, 1928, 1937 1946, 1954, 1962; New York, 1866, 1886, 1936; Ohio, 1871, 1910. For more detailed information as to each referendum, see the Appendix.

[15] New Hampshire, 1861, 1864; Iowa, 1920. For more detailed information, see the Appendix. Graves, *State Constitutional Law: A Twenty-Five Year Summary*, 8 WM. & MARY L. REV. 1, 6 (1966) relates that in California the legislature in 1934 and again in 1946 refused to call a constitutional convention after the voters had adopted initiated proposals for a convention.

[16] Maryland, 1930, 1950; Massachusetts, 1795; Michigan, 1898, 1958. For more detailed information, see the Appendix.

[17] *See* note 25, *infra.*

[18] Massachusetts, 1780; New Hampshire, 1792; Kentucky, 1792; Indiana, 1816; New York, 1846; Michigan, 1850; Maryland, 1851; Ohio, 1851; Iowa, 1857; Virginia, 1870; Oklahoma, 1907; Missouri, 1920; Alaska, 1959; Hawaii, 1959; Connecticut, 1965. New Hampshire had included in its constitution of 1784 a mandate that seven years after the effective date of that constitution delegates were to be elected to a convention to consider revisions in that constitution. The convention which convened in 1791 drafted what became the 1792 constitution. COLBY, MANUAL OF THE CONSTITUTION OF NEW HAMPSHIRE 140-45 (1902).

to a mandatory referendum. The philosophy of these states would appear to have been that the task of changing the constitution was reserved solely to the people and that the legislature was to have no role in it, neither by being able to propose amendments nor by having specific authority on its own initiative to call a convention or to submit the question to the people. New York in its 1846 constitution was the first state to combine a mandatory referendum provision with legislative authority to propose specific amendments.[19] The committee of the 1846 New York convention which proposed the requirement to that convention defended it on the grounds that "it asserted a great principle, and that once in twenty years they might have the matters into their own hands," but "if the people were satisfied with the Constitution, they could endorse it, and the state of things would continue."[20] Similar sentiments were expressed in the 1850-51 Ohio constitutional convention and the New York Constitution was pointed to as an example to follow.[21] The reason expressed for the mandatory referendum in the 1857 Iowa convention—a desire to insure that the people are able to exercise their right to reform their government without interference by the legislature[22]—has become the most often articulated basis for it.[23]

There are two major points upon which mandatory referendum provisions may differ. The first and most important is whether the section is self-executing, i.e. once the voters speak in favor of a convention one will be held without further action by the legislature. Of the eleven states which now have the mandatory referendum, the constitutions of Alaska, Hawaii, Michigan, Missouri, New York, and New Hampshire are self-executing, while Connecticut, Iowa, Maryland, Ohio and Oklahoma (plus Arkansas and Illinois if their new constitutions are ratified) depend upon legislative action to make them effective.[24] There is ample justification for a provision which is self-executing. This is the surest way in which the avowed purpose of the mandatory referendum provision—to permit the people to exercise their right to reform their government without interference by the existing government—can be fulfilled. The self-executing provision also avoids the problems necessarily involved in an effort to obtain a convention through the judicial process. To the extent that conflicts between different branches of government can be avoided, they should be.

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[19] N. Y. CONST. art. XIII (1846).

[20] NEW YORK STATE CONSTITUTIONAL CONVENTION COMMITTEE, LEGISLATURE ORGANIZATION AND POWERS 365 (1938).

[21] II DEBATES OF 1850-51 OHIO CONSTITUTIONAL CONVENTION 429-36 (1851).

[22] I DEBATES OF 1857 IOWA CONSTITUTIONAL CONVENTION 604-09 (1857).

[23] *See e.g.*, DEBATES OF 1950 HAWAII CONSTITUTIONAL CONVENTION 748-49 (1961); WHEELER, *Changing the Fundamental Law*, in SALIENT ISSUES OF CONSTITUTIONAL REVISION 58-59 (Wheeler ed. 1961).

[24] The relevant constitutional provision of each state is set out in the Appendix.

The other major difference between the states is on the question of the majority required by the constitution to have a convention. Several of the states have in the past required a majority of all those voting at the election rather than a voting-on-the-question majority before a convention would have to be held. Experience has shown, however, that it is almost impossible in a general election to have a majority even vote on a constitutional issue, much less be in favor of a proposition. Now only Maryland would appear to require the voting-at-the-election majority. This trend is advisable because it avoids having the person who votes at the election, but not on the referendum question, counted as a negative vote. Treating his non-vote in this manner is a presumption that has no basis in fact and thus should not be applied to the fundamental issue of revising the state constitution.

III. Judicial Relief for Non-Compliance

In determining the availability of judicial relief to obtain a convention when the legislature refuses to act in accordance with a constitutional directive, it should first be noted that the early mandatory referendum provisions were not self-executing but depended upon the legislature to call the convention and provide for the election of delegates. It was not until the New York convention of 1894 that an attempt was made to bypass the legislature and make the constitution self-executing. This change resulted from the delay by the New York legislature in calling a convention after the mandatory 1886 referendum favored a convention.[25] It appears that New York and the other states which followed its lead included the self-executing provisions because in their absence it was thought that there was no means available to compel the legislature to call a convention after a favorable vote of the people. In those states that do not have a self-executing provision, the philosophy is that the legislature will comply with the vote of the people.[26] As we have seen, however, this assumption is not justified because legislatures in the past have refused or neglected to comply with the constitution.[27] In this situation must a court deny relief on the ground that it cannot force compliance with the constitution? There are several theories which indicate that a court may be able to compel the calling of a convention and thus make effective the people's right to reform their government.

The principle that a court lacks power to do anything in the face of a legislative refusal to do what the constitution commands is based on several different theories: (1) mandamus will not issue to compel the legislature to pass legislation which necessarily involves the exercise of

[25] New York State Constitutional Convention Committee, Legislative Organization and Powers 369-70 (1938).

[26] *See e.g.*, I Debates of 1857 Iowa Constitutional Convention 622-26 (1857).

[27] *See* note 15, *supra.*

discretion;[28] (2) one branch of government cannot interfere with another branch in the performance of duties exclusively committed by the constitution to the latter.[29] Both of these theories are generally encompassed by the concepts of separation of powers, political question and non-justiciability.[30]

One potential justification for judicial involvement in the calling of a constitutional convention lies in the nature of the convention and the role of the legislature in calling a convention. A careful analysis of both of these issues was made by the Maryland Court of Appeals in *Board of Supervisors of Elections v. Attorney General*.[31] The people of Maryland at a special election in 1966 had voted to have a constitutional convention.[32] In considering the enabling legislation for the convention, an argument arose as to whether members of the legislature were able to be delegates to the convention notwithstanding a prohibition in the Maryland constitution against a person holding more than one public office. The legislature caused a declaratory judgment suit to be filed to determine this and other relevant questions, including that of whether the legislature could delay the calling of a convention beyond the deadline included in the 1966 referendum. The court held on the main issue that legislators and other public officials could be delegates to a constitutional convention. It reasoned that the Maryland constitutional prohibition against a person holding more than one office applied only to offices created by or under the constitution, that the office of convention delegate was not an office created by or under the constitution, and thus the prohibition did not apply.[33] In deciding that a convention delegate was not an officer under the constitution, the court held that a convention is not an agency under the constitution but is the direct agent of the people and exists independent of the constitution as the means by which the people exercise their reserved and inherent right to alter or reform their government. As corollaries to this, the court stated that the role of the legislature in the calling of a constitutional convention is independent of its law-making role assigned to it by the constitution, and that in par-

[28] Re State Census, 6 S.D. 540, 542, 62 N.W. 129, 130 (1895); Fergus v. Marks, 321 Ill. 510, 517-18, 152 N.E. 557, 560 (1926). Note, *State Constitutional Change: The Constitutional Convention, Its Nature and Powers-And the Amending Procedure*, 1966 UTAH L. REV. 390, 397; GRAD, THE DRAFTING OF STATE CONSTITUTIONS pt. II, 25-39 (1967).

[29] Dodd, *Judicially Non-enforcible Provisions of Constitutions*, 80 U. PA. L. REV. 54, 56-61, 84-92 (1931).

[30] The relationship between these three concepts is discussed in *Baker v. Carr*, 369 U.S. 186, 208-37 (1962). In this opinion the Court points out that the "nonjusticiability of a political question is primarily a function of the separation of powers." *Id.* at 211.

[31] 246 Md. 417, 229 A.2d 388 (1967).

[32] The legislature submitted the question to the people on its own initiative and not pursuant to any specific constitutional authorization. The power of the legislature to do this was one of the issues in Board of Supervisors of Elections v. Attorney General, *id.* The court held that the submission was proper.

[33] *Accord*, Harvey v. Ridgeway, —— Ark. ——, 405 S. W.2d 281 (1970).

ticipating in calling a convention it is not carrying out its law-making function under the legislative article of the constitution but is merely assisting the people to perform their reserved constitution-making function.[34] It can be concluded from this discussion that the reason the legislature participates in this process is because it is a convenient agency for doing so and not because the tasks ordinarily performed by a legislature in calling a convention are inherently legislative in nature.[35] If this view of the legislative role in the calling of a constitutional convention is accepted, the problem of separation of powers, which arises whenever it is suggested that a court either order a legislative body to act or act in place of the legislature to effectuate the people's call for a convention, does not appear to be relevant. The doctrine of separation of powers is concerned with those governmental powers which are assigned by the constitution—the legislative, executive and judicial powers.[36] If as the Maryland court has stated, participation in the calling of a constitutional convention is not one of those powers, then separation of powers is not applicable to it and it would not be a violation of the principle for the court to play a role in it.

It could be argued that the Maryland case is not on point because it did not involve the 20-year referendum required by the Maryland Constitution but a referendum submitted by the legislature on its own initiative. In the mandatory referendum situation, the duty is specifically imposed by the constitution upon the legislature to call a convention if the people vote in favor of one. Even if the separation of powers doctrine is not applicable when the constitution is silent on whose function it is to call a convention, it does apply if the constitution imposes the obligation to call a convention upon the legislature, then no other branch of government has the power to interfere with the legislature's compliance or non-compliance with its constitutional duty. It is suggested that even though the constitution does assign the duty of calling a convention to the legislature when the people vote in a mandatory referendum to have one, if the legislature refuses to comply with the people's directive, it would not violate the constitution for a court to take whatever steps are necessary to see that a convention is held. As has been pointed out by the Maryland case, the role of the legislature in the calling of a convention arises out of convenience, not because the duties involved are

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[34] Board of Supervisors v. Attorney General, 246 Md. 417, 428-34, 229 A.2d 388, 394-97 (1967). *Accord*, Carpenter v. Cornish, 83 N.J.L. 254, 83 A. 31 (1912); HOAR, CONSTITUTIONAL CONVENTIONS 80-85 (1917).

[35] HOAR, CONSTITUTIONAL CONVENTIONS 75-78 (1917) comes very close to making this point.

[36] People v. Bissel, 19 Ill. 229, 231-32 (1857). *See generally*, VILE, CONSTITUTIONALISM AND THE SEPARATION OF POWERS (1967); JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 28-40 (1965).

legislative in nature.[37] It would seem strange that a constitutional assignment of a duty based on convenience could be used as a reason to deny another agency of government, the court, the power to insure that the vote of the people and the directive of the constitution are made effective. Convenience would then become the master rather than the slave of the ultimate objective—the right of the people to reform their government.[38] To deny the power of a court to do what is necessary to make a reality of this basic sovereign right when the legislature refuses to carry out its duty on the ground that the people in the constitution have given to the legislature and to no one else the responsibility for assisting them in implementing their right, is putting form over substance. If the legislature refuses to act the people have no direct recourse except to the courts.[39] If the courts refuse to act, they have no recourse at all.[40] The result would be that the basic feature of our system of government, the power of the people over the form of their government, is completely frustrated, and all in the name of a constitutional provision designed to insure that the people are able to exercise this power. It is doubtful that the courts would be held to be powerless in those states in which the responsibility for initiating the machinery for holding a convention is assigned not to the legislature, but to the governor, lieutenant governor or secretary of state.[41] There should be no different result merely because the legislature rather than an official of the executive branch was chosen as the agent to carry out the mandate of the people.

Several cases indicate that the traditional reluctance of courts to order a legislature to act may not apply in the constitutional convention referendum situation. In *Board of Supervisors of Elections v. Attorney General*[42] the Maryland Court of Appeals, in discussing the issue of whether the legislature could delay the convention beyond the period authorized by the voters in the 1966 referendum, agreed with the trial court which

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[37] See discussion *supra* notes 34-35.

[38] The Prohibitory-Amendment Cases, 24 Kan. 700, 710-11 (1881) make the same point in upholding the validity of a constitutional amendment which had been adopted by the people but had not been printed in full in the legislative journals as required by the existing constitution. *Accord*, Baker v. Moorhead, 103 Neb. 811, 174 N.W. 430 (1919).

[39] *Wells v. Bain*, 75 Pa. 39, 47-48 (1873) suggests that the only remedy is for the people to elect new representatives who will call a convention. This, as HOAR, CONSTITUTIONAL CONVENTIONS 76 (1917) points out, is not sufficient. Elections of a majority of the members of a state legislature do not turn on such issues. Stubbs, *Constitution-Making in Georgia*, 6 GA. BAR J. 207, 212 (1944) suggests that if the legislature refuses to provide for the election of delegates to a convention, the governor, pursuant to his duty to uphold the constitution, is obligated to do so.

[40] *Wells v. Bain*, 75 Pa. 39, 47-48 (1873) makes the further suggestion that if the elective process does not work there is always the right of revolution but this is hardly tenable, particularly in view of the responsibilities of the Federal Government under the guarantee clause of article IV of the Constitution.

[41] Alaska, Hawaii, Missouri, and New Hampshire. For the particular provision of each state, see the Appendix.

[42] 246 Md. 417, 229 A.2d 388 (1967).

had held that the "convention was called by the Legislature and confirmed by the people. The General Assembly cannot ignore this mandate." In submitting the issue to the people it "bound itself to the mandate expressed by them. The people have spoken in clear and unmistakable terms, and the legislature is bound to obey. The only thing remaining to be done is to provide for the election of delegates." The Court of Appeals went on to say that "it was mandatory that a convention be called at this time and that the call could not be delayed."[43] The court did not discuss what it would have done had the legislature refused to take the necessary steps to have a convention, but it is unlikely that it would have used the strong language it did, had it not been willing to go beyond merely stating the obligation of the legislature under the circumstances.

The Court of Appeals of Kentucky in *Chenault v. Carter*[44] went even further than the Maryland court when it described the function of the legislature, once the people had voted for a convention, as a "ministerial duty enjoined upon it by the constitution in the execution of a public mandate."[45] The court also stated that the "choice of whether a constitutional convention shall be called rests entirely with the electorate. The discretion of the legislature is at an end when the matter is finally proposed."[46]

Another case in which a court has commented on the nature of the function of the legislature once the people have decided to have a convention is *Carton v. Secretary of State*[47] in which the issue before the Supreme Court of Michigan was whether the constitution adopted by the 1907-08 Michigan constitutional convention was to be submitted to the people at the time directed by the legislature in the convention enabling act or on the date fixed by the constitutional convention. The court held that it was within the discretion of the convention to determine when the constitution should be voted on by the people. In so holding the court made it clear that once the people indicated they wanted a convention the legislature's power over it was limited to providing for the election of delegates to the convention. The court stated that the "power to provide for an election is the sole power conferred" on the

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[43] *Id.* at 445, 229 A.2d at 403.

[44] 332 S.W.2d 623 (Ky. 1960). In this case the court was faced with the question of whether the legislature could submit to the people the issue of whether a convention, limited in the areas of the constitution to which it could propose revisions, should be held. The court held that the convention could be so limited, but that the limiting authority would be the people by their approval of the referendum rather than the legislature by its passage of the act providing for the referendum.

[45] *Id.* at 626.

[46] *Id.*

[47] 151 Mich. 337, 115 N.W. 429 (1908).

legislature and that "the power then conferred [in the constitution] is ministerial rather then legislative."[48]

The use of the words "duty," "ministerial" and "discretion" are significant here because this is the language of the law of mandamus, the general rule being that a court will issue a writ of mandamus only when the duty of the public officer in question is ministerial and involves no discretion on the part of the officer.[49] These three cases, by the use of language that is usually reserved for situations in which mandamus is the appropriate remedy, have established the basis for a court to hold that it has the power to compel the legislature to provide for election of delegates to a convention and that in so doing it is not violating the separation of powers. A court should be able to accept the position that after the people vote for a convention, the legislature's subsequent duty to provide the necessary machinery to have an election of delegates to a convention is merely ministerial and does not call for the exercise of discretion. Having adopted this view, a court could legitimately rule that the legislature is subject to a writ of mandamus to carry out its constitutional duty. In carrying out a non-legislative ministerial duty the legislature, as well as the executive and other public officers, is subject to being ordered by a court to perform its duty.

Apart from enforcing a ministerial duty of the legislature, it can also be maintained that the "right to reform" supposedly guaranteed by the constitution is not merely an indefinite and vague "right of the people" not belonging to anyone in particular but is rather a right that is individual and personal and capable of being enforced by the courts. When a constitution states that it is the "right" of the people to reform their government, what does the use of the word "right" imply? It should be noted that the term is not used extensively in the body of state constitutions even though every constitution has a portion of it designated as a bill or declaration of rights.[50] These bills or declarations generally contain what are commonly thought of as "rights," i.e., affirmative or negative commands to the government for the protection of the individual, but they also include many other statements which are mere expressions of political philosophy.[51] Is the "right" to reform the government a true "right" or just a statement of political philosophy? Up to the present the judicial reliance on the "right" has been to justify some action leading to constitutional reform but not as a basis for affirmative judicial action to compel a legislature to comply with the wishes of the people

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[48] *Id.* at 341, 115 N.W. at 431.

[49] JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 176-92 (1965).

[50] Force, *State "Bills of Rights": A Case of Neglect and the Need for a Renaissance*, 3 VAL. U. L. REV. 125, 137 (1969).

[51] The various provisions of the Bills of Rights are set forth in the Appendix to *id.* at 164-82.

as expressed in a referendum.[52] It is suggested that by the use of the word "right" in relation to the control the people have over their government, something more is meant than sheer power or authority.[53] If those words or words of similar import were intended, they, rather than the word "right", would have been included in the constitution and it would have been understood by all that the statement was nothing more than a recognition of the obvious, that if the people are successful in forcibly taking power into their own hands notwithstanding the opposition of existing governmental institutions, they can reform their government and cannot be called to account for it. But the word "right" was used, and in a society which is premised upon the recognition by the government of the rights guaranteed by the constitution and upon a judicial process designed to enforce those rights, it must be assumed that the constitutional draftsmen and the people who adopted the constitution did so with full knowledge of its significance.

Under the "right" theory, it can be argued that the legislature should be compelled to provide for a convention on the basis that it is denying an individual's right to reform his government after he and others had been a majority in a referendum on the question of holding a convention. Once the people have attempted to guarantee the right by constitutionally mandating a periodic vote on calling a convention and by commanding that in the event of a favorable vote a convention must be held, the "right" to reform is no longer only a general statement of principle but something to which a person who voted for a convention is entitled as a matter of constitutional guarantee. There would be little point in the constitutional draftsmen adding to the constitution this mandatory machinery designed to result in a convention being held when the people so desire, if the legislature is free to disregard the wishes of the people and the people are left without recourse. The objective of the mandatory provision is to do away with the necessity for reliance on the legislature and thus enable the people to exercise their right to reform their government without interference. This is shown by the debates in the constitutional conventions which adopted the mandatory provisions. In Iowa, for example, in the debate on the periodic mandatory vote, those who favored it stressed the importance of permitting the people to exercise their right to reform their government without having to rely on the existing government.[54] The example of Doar's Rebellion in Rhode Is-

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[52] *See e.g.*, Harvey v. Ridgeway, —— Ark. ——, 450 S.W.2d 281 (1970); Board of Supervisors of Elections v. Attorney General, 246 Md. 417, 229 A.2d 388 (1967); Re Opinion of the Justices 55 R.I. 56, 178 A. 433 (1935); Wheeler v. Board of Trustees, 200 Ga. 323, 37 S.E.2d 322 (1946); Gatewood v. Matthews, 403 S.W.2d 716 (1966); Cummings v. Beeler, 189 Tenn. 151, 223 S.W.2d 913 (1949); Staples v. Gilmer, 183 Va. 613, 33 S.E.2d 49 (1945).

[53] Braxton, *Powers of Conventions*, 7 VA. L. REG. 79, 81 (1901).

[54] I DEBATES OF 1857 IOWA CONSTITUTIONAL CONVENTION 604-09 (1857).

land in 1842, as related in the case of *Luther v. Borden*,[55] was cited to show what can happen when the people's inherent right to reform their government is blocked by the government in power.[56] The mandatory referendum is, consequently, intended to be an alternative to armed revolution. But if there is no way to have a convention when the legislature refuses to act, the people are in the same position as had the mandatory referendum not been placed in the constitution, that is with armed revolt as the only recourse open to a people who want to exercise their right to reform their government. Such a result could hardly have been intended by those who included the mandatory referendum in the constitution. It seems reasonable to conclude that what was intended by the adoption of the mandatory referendum was not only that a vote would be taken, but that if the vote were in favor of a convention, a convention would be held. It was certainly not the intention of the draftsmen that the legislature would still have the discretion as to whether a convention would occur.

The case usually cited in support of the proposition that the calling of a constitutional convention is completely subject to the will of the legislature notwithstanding a vote of the people in favor of a convention is *Wells v. Bain*.[57] In that case the narrow issue before the court was whether a convention has the authority to control the procedures at the election at which the constitution drafted by the convention was to be accepted or rejected by the voters. The Pennsylvania Supreme Court held that because the enabling act for the convention provided that the referendum on the constitution was to be conducted in the same manner as other general elections, the convention could not establish a different procedure. In so holding, the court made an extensive analysis of the status and power of a constitutional convention and, in particular, of the convention's relationship to the legislature and to the people. The court's discussion was based on its construction of the section of the Pennsylvania Constitution preserving the right of the people to alter or reform their government. The court stated that there were three ways in which this right could be executed: "(1) The mode provided in the existing constitution. (2) A law as the instrumental process of raising the body for revision and conveying to it the powers of the people. (3) A revolution."[58] The court in its opinion was only concerned with the situation described in the second alternative, that is when the constitution itself does not regulate the manner in which a convention is to be called. The first alternative was inapplicable because the Pennsylvania Constitution did not provide for the calling of a constitutional convention. Thus,

[55] 48 U.S. (7 How.) 1 1849.

[56] I DEBATES OF 1857 IOWA CONSTITUTIONA CONVENTION 609, 623-24 (1857).

[57] 75 Pa. 39 (1873).

[58] *Id.* at 47-48.

the entire discussion by the court is irrelevant to the situation in which the constitution does specify the duty of the legislature to call a convention. It should also be noted that *Wells v. Bain* is inconsistent with the Maryland case, *Board of Supervisors of Elections v. Attorney General*,[59] and with the thinking of most other courts in its view that, when the people vote for a convention in a referendum proposed by the legislature on its own initiative, the vote merely authorizes the legislature to call a convention but is not a mandate on the legislature to do so.

Several provisions of the United States Constitution are also possible bases for judicial enforcement of the people's call for a convention. The federal claim most likely to be accepted by a court is one based on the equal protection clause of the fourteenth amendment. Adapting the principle of the reapportionment cases to the refusal of a state government to comply with a convention referendum, it appears that this action of the state government is a denial of the effectiveness of an individual's vote in an even more direct way than is a malapportionment of legislative seats.[60] In the reapportionment situation, the impact of the failure to give equal weight to each person's vote is complicated by the vagaries of the legislative process and the other factors which militate against the one man-one vote principle achieving the desired result.[61] It has, in fact, only the advantage of mathematical symmetry. In the situation of a legislature's refusal to abide by a convention referendum, however, the effectiveness of the vote of a person who favors a convention is not merely being reduced, it is being denied completely. The result is the same as if the election officials had torn up all the ballots in favor of a convention or had refused to permit those who favored a convention to cast their vote.

It can also be argued that the right to reform the government is one of those fundamental rights contained in the concept of liberty protected by the due process clauses of the fifth and fourteenth amendments. It has been recognized that the due process clause "protects those liberties that are so rooted in the tradition and conscience of our people as to be ranked as fundamental,"[62] including the right to privacy,[63] the right to travel,[64] and the right to educate one's children.[65] It is suggested that the most fundamental of all rights is the right of the

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[59] 246 Md. 417, 229 A.2d 388 (1967).

[60] For another possible application of the equal protection clause to a voting situation see Note, *Supermajority Voting Requirements: Possible Constitutional Objections*, 55 IOWA L. REV. 674 (1970).

[61] Dixon, *The Warren Court Crusade for the Holy Grail of "One Man-One Vote,"* 1969 SUP. CT. REV. 219.

[62] Justice Goldberg, concurring in Griswold v. Connecticut, 381 U.S. 479, 487 (1965).

[63] Griswold v. Connecticut, 381 U.S. 479 (1965).

[64] Aptheker v. Secretary of State, 378 U.S. 500 (1964).

[65] Meyer v. Nebraska, 262 U.S. 390 (1923).

people and of the individuals who constitute the people to reform their government. This right was recognized in the Declaration of Independence as a justification for the American Revolution.[66] It is recognized in most state constitutions,[67] and it has been held that the right exists even if not specifically mentioned in the constitution.[68] It is consequently one of the most basic of all fundamental rights and thus is within the liberty protected by the fifth and fourteenth amendments.

Another argument that can be made is that the ninth amendment is a basis for recognizing the existence and enforceability of the right to reform the government. The ninth amendment, which provides that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people," has recently been used to justify the judicial recognition of rights not specifically mentioned in the Constitution.[69] In view of the fundamental nature of the right to reform the government, it seems logical to include it within those unenumerated rights recognized by the ninth amendment.

The guarantee of a republican form of government contained in section 4, article IV of the Constitution[70] can also be used as a foundation for judicial relief. The essential concept of a republican form of government is that the ultimate control over the government resides in the people.[71] If this is the case, and if it is the responsibility of the federal government to guarantee this control, then it seems appropriate that when a state government refuses to follow the command of the people as expressed in a convention referendum, a federal court, as one of the institutions established to insure that the Constitution is observed, or a state court, which has a similar obligation to uphold the federal Constitution, must take appropriate steps to insure that a reluctant state government maintains a republican form of government by complying with the mandate of the people as expressed in a referendum established by the state constitution.[72]

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[66] Note 3, *supra.*

[67] Note 2, *supra.*

[68] See the cases and authorities cited in note 6, *supra.*

[69] Griswold v. Connecticut, 381 U.S. 479 (1965), concurring opinion of Justice Goldberg at 486 (right of privacy).

[70] "The United States shall guarantee to every State in this Union a Republican Form of Government . . ."

[71] Bonfield, *The Guarantee Clause of Article IV, Section 4: A Study in Constitutional Desuetude*, 46 MINN. L. REV. 513, 558 (1962).

[72] The major difficulty with this thesis is that in *Baker v. Carr*, 369 U.S. 186 (1962), the Court specifically held that a case arising under the guarantee clause was a non-justiciable political question and that a case involving the apportionment of a state legislature was justiciable because it involved the equal protection clause of the fourteenth amendment and not the guarantee clause of article IV. This rationale was criticized by Justice Frankfurter in his dissent in *Baker v. Carr*, 369 U.S. at 297, and by Bonfield, *Baker v. Carr: New Light on the Constitutional Guarantee of Republican Government*, 50 CAL. L. REV. 245 (1962). In *Kobler v. Tugwell*, 292 F. Supp. 978 (E.D. La. 1968), *aff'd* 393 U.S. 531 (1969), two mem-

There are two major hurdles which a court would have to face in considering a suit seeking relief from a legislative refusal to call a constitutional convention. The first deals with the power of the court to hear the case and the second with the type of relief which the court can grant. A court would initially be confronted with objections to its jurisdiction to hear the case on the grounds that the issue was not justiciable, was a political question or was a violation of the separation of powers, or a combination of all three.[73] Essentially, no matter how it is phrased, the issue involves the propriety of a court considering the matter of the legislative refusal to take action when the constitution says it must do so. If the claim is based upon the alleged violation of a federal constitutional right, *Baker v. Carr*[74] would appear to eliminate any serious question as to the jurisdiction of the court. That case makes it clear that the limitations of justiciability, political question and separation of powers do not apply to a suit alleging that a federal constitutional right has been violated by a refusal by a state legislature to act.[75] This was, of course, the exact situation presented in the apportionment cases.

Similarly, there is no problem in a court taking jurisdiction of a case in which the plaintiff's claim is based on the theory that the duty of the legislature in calling a convention after a referendum in favor of one is merely ministerial and does not call for the exercise of legislative discretion. If a court agrees with that theory it merely applies the usual mandamus principles.[76] Any problem arising from traditional notions of separation of powers can be avoided by a recognition of the fact that a legislature, when it deals with the question of a constitutional convention, is not exercising normal legislative power but a special power assigned to it as a matter of convenience to assist the people in exercising their sovereign right to revise their constitution. A court, by refusing to act in such circumstances, would not be respecting a constitutional limitation on its powers but merely permitting a designated agent of the people not to do what the people have said it must do.[77]

Even if a court does accept jurisdiction of the case and holds that the plaintiff is entitled to relief, is there any relief which the court is able to grant? Again, the reapportionment cases may provide the basis for an

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bers of a three judge panel were of the opinion that under some circumstances the guarantee clause might be judicially enforceable.

[73] See the discussion at notes 28-36, *supra.*

[74] 369 U.S. 186 (1962).

[75] "[I]t is the relationship between the judiciary and the coordinate branches of the Federal Government and not the federal judiciary's relationship to the States which give rise to the 'political question'." *Id.* at 210. Cases involving the guarantee clause of article IV are an exception to this statement because the Court has construed that clause to be enforceable by other branches of the Federal Government. *Id.* at 218-25.

[76] See the discussion at notes 42-49, *supra.*

[77] See the discussion at notes 28-36, *supra.*

affirmative answer. In those cases the courts have at first delayed granting relief to permit the state legislatures to have an opportunity to reapportion themselves. The courts then have reviewed the reapportionment measures adopted by the state legislatures, and if they still did not meet the requirements of equal protection, the judges themselves have reapportioned the legislatures.[78] Applying this precedent to the convention problem, a court could direct that unless the legislature enacted by a certain date the legislation appropriate for a convention, the court would enter an order which would include the same provisions as would be in an enabling act.

It is at this point that the most substantial objection to a court assuming a role in the calling of a constitutional convention arises. It is obvious that in calling a constitutional convention there are several details concerning the election and compensation of delegates and operating funds for the convention which may involve the exercise of discretion on matters ordinarily the subject of legislative action. Particularly difficult for a court would be the questions of the number of delegates, the districts from which they would be elected, and whether the election would be partisan or non-partisan.[79] Presumably, to the extent of reasonable applicability, the election would be held in the same manner as other state elections. If the state constitution does not specify the essential provisions for the election of the delegates to the convention, the court is not without any guidance in the matter. It could, for example, merely follow the pattern set by the most recent constitutional convention held in that state or, if for some reason that was not practical, it could use the existing state legislature, or one house thereof, as its model.

The question of providing funds for the convention is just as difficult. State constitutions do not, with one exception,[80] specify that a convention may spend whatever it deems appropriate. To the contrary, in most states public funds may not be expended without a legislative appropriation. Notwithstanding this, it would seem that if the state constitution commands that under certain circumstances a convention be held and the sole purpose of the judicial proceeding is to achieve compliance with the constitution, it would not be inconsistent with the constitution for a court to authorize the expenditure of state funds for a convention. Again it comes down to a question of not permitting the legislature to negate the fundamental right of the people to reform their

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[78] See DIXON, DEMOCRATIC REPRESENTATION: REAPPORTIONMENT IN LAW AND POLITICS ch. 12 (1968).

[79] Under some constitutions these matters would not prove a problem because most of these details are specified in the constitutions themselves. *See e.g.*, the HAWAII CONST. art. XV, §1. All the court would have to do is order the state or local officials in charge of election to hold an election on a certain date.

[80] MISSOURI CONST. art. XII, §3(b).

government by a refusal to act when it has a constitutional obligation to act.[81]

The court need not consider any issues beyond the election of the delegates to the convention and making sure that the convention is funded. Other matters such as when the convention begins, how long it sits, what votes are necessary for it to take action, and when the constitution it adopts is to be submitted to the people, are all matters which are properly left to the convention, although most legislatures attempt to control these details by means of the enabling legislation for the convention.[82]

IV. CONCLUSION

It is clear that notwithstanding the central place in our political system of the right of the people to reform their government, without a mandatory referendum on calling a constitutional convention this right is dependent upon legislative action which often is not forthcoming. Unless the people have voted for a convention, judicial relief from a refusal of the legislature to act is not possible because, among other reasons, there is no way in which a court can determine whether the people actually desire to exercise this right. As a response to this problem, an increasing number of states, including eleven at the present time, have included in their constitutions a provision which requires that the question of calling a constitutional convention be submitted to the people at stated or minimum intervals and, if the requisite majority of voters favors a convention, either imposes upon the legislature the duty to provide the mechanics for the holding of a convention or is self-executing to the extent that a convention will be held without further action of the legislature. The self-executing provision is preferable, because legislatures can and have refused to call a convention on several occasions when the people have voted in favor of having a convention. It has been accepted up to now that in the face of a legislative refusal to comply with a vote of the people for a convention, the courts are powerless to order the legislature to do what the constitution says it must do. Several recent cases have, however, suggested a number of legal bases for a court to take the action necessary for a convention to be held. These bases include the several federal constitutional provisions and an understanding of the role of the legislature in calling a constitutional convention. Whatever basis is used, it is suggested that a court need no longer stay its hand in the face of legislative opposition to the holding of a constitutional convention called for by the people in a constitution-

[81] HOAR, CONSTITUTIONAL CONVENTIONS 177-80 (1917) suggests that a convention has the inherent power to incur whatever expenses it deems necessary. *But see* Constitutional Convention v. Evans, —— N.M. ——, 460 P.2d 250 (1969).

[82] Note, *State Constitutional Conventions: Limitations on Their Powers*, 55 IOWA L. REV. 244 (1969).

ally mandated referendum. In this way the fundamental right of the people to reform their government can be protected.

APPENDIX

SUMMARY OF DATA ON MANDATORY CONSTITUTIONAL CONVENTION REFERENDA

State	*Const. Provision*	*Date*	*Vote*		*Result when Majority Voted for a Convention*
Massachusetts	Const. 1780[1] part II, § chapter VI, art. X	May 6, 1795	For:	11,386[2]	no convention called[3]
			Against:	10,867	
New Hampshire	Const. 1792[4] part II, §§99 and 100	Mar. 1800	For:	2,478[5]	
			Against:	4,246	
		Mar. 1807	For:	1,722	
			Against:	10,903	
		Mar. 1814	For:	532[6]	
			Against:	16,141	
		Mar. 1821	For:	2,407	
			Against:	13,853	
		Mar. 1833[7]	For:	4,623	
			Against:	11,818	
		Mar. 1834	For:	5,973	
			Against:	12,183	
		Mar. 1838	For:	2,821	
			Against:	16,830	
		Mar. 1844	For:	10,855	
			Against:	20,994	

State	Const. Provision	Date	Vote		Result when Majority Voted for a Convention
		Mar. 1847	For:	4,583	
			Against:	12,415	
		Mar. 1850	For:	28,877	convention called:
			Against:	14,482	Laws of N.H., 1850, c.959
		Mar. 1858	For:	2,822	
			Against:	18,499	
		Mar. 1861	For:	11,078	no convention called[8]
			Against:	9,753	
		Mar. 1863	For:	1,044	
			Against:	12,428	
		Nov. 1864	For:	18,422	no convention called[9]
			Against:	15,348	
		Nov. 1868	For:	12,219	
			Against:	12,346	
		Mar. 1870	No Record		
		Mar. 1876	For:	28,971	convention called:
			Against:	10,912	Laws of N.H., 1876, c.30
		Nov. 1884	For:	13,036	
			Against:	14,120	
		Mar. 1886	For:	11,466	convention called:
			Against:	10,213	Laws of N.H., 1887, c.107
		Nov. 1894	For:	13,681	
			Against:	16,689	

Nov. 1896	For:	14,099	
	Against:	19,831	
Nov. 1900	For:	10,571	convention called: Laws of N.H., 1901, c.85
	Against:	3,287	
Nov. 1910	For:	23,105	convention called: Laws of N.H., 1911, c.187
	Against:	15,541	
Nov. 1916	For:	21,589	convention called: Laws of N.H., 1917, c.121
	Against:	14,520	
Nov. 1924	For:	22,520	
	Against:	42,616	
Nov. 1928	For:	29,848	convention called: Laws of N.H., 1929, c.190
	Against	21,831	
Mar. 1937	For:	20,559	convention called: Laws of N.H., 1937, c.187
	Against:	20,462	
Nov. 1946	For:	49,230	convention called: Laws of N.H., 1947, c.77
	Against:	29,336	
Nov. 1954	For:	64,813	convention called: Laws of N.H., 1955, c.42
	Against:	37,494	

State	*Const. Provision*	*Date*	*Vote*		*Result when Majority Voted for a Convention*
		Nov. 1962	For: Against:	94,597 49,418	convention called: Laws of N.H., 1963, c.143
Kentucky	Const. 1792[10] article XI	May 1797	For: Against:	5,446[11] 4,367	no convention called[12]
		May 1798	For: Against:	8,804[13] 3,049	convention called:[14] Laws of Ky., 1798, c.140
Indiana	Const. 1816[15] article VIII	Aug. 4, 1828	For: Against:	10,092[16] 18,633	
		Aug. 3, 1840	For: Against:	12,277[17] 61,721	
New York	Const. 1846[18] article XIII, §2	Nov. 6, 1866	For: Against:	352,854[19] 256,364	convention called: Laws of N.Y., 1867, c.194
		Nov. 2, 1886	For: Against:	574,993 30,766	convention called: Laws of N.Y., 1892, c.398 Laws of N.Y., 1893, c.8 Laws of N.Y., 1894, c.228
	Const. 1895[20] article XIV, §2	Nov. 7, 1916	For: Against:	506,563 658,269	

		Nov. 3, 1936	For:	1,413,604	convention called[21]
			Against:	1,190,275	
		Nov. 5, 1957[22]	For:	1,242,568	
			Against:	1,368,063	
Michigan	Const. 1850[23] article XX, §2	Nov. 1866	For:	79,505[24]	convention called: Laws of Mich., 1867, No. 41
			Against:	28,623	
		Nov. 1882	For:	20,937	
			Against:	35,123	
		Nov. 8, 1898	For:	162,123	no convention called[25]
			Against:	127,147	
	Const. 1908[26] article XVII, §4	1926	For:	119,491	
			Against:	285,252	
		1942	For:	408,188	
			Against:	468,506	
		1958	For:	821,282	no convention called[27]
			Against:	608,365	
		1961	For:	596,433	convention called[28]
			Against:	573,012	
	Const. 1963[29] article XII, §3				
Maryland	Const. 1851[30] article XI	No vote taken[31]			

State	*Const. Provision*	*Date*	*Vote*		*Result when Majority Voted for a Convention*
	Const. 1864[32] article XI, §3				
	Const. 1867[33] article XIV, §2	Nov. 8, 1887	For: 72,464[34] Against: 105,735		
		Nov. 5, 1907	For: 32,778 Against: 87,035		
		Nov. 4, 1930	For: 108,351 Against: 93,701		no convention called[35]
		Nov. 7, 1950	For: 200,439 Against: 56,998		no convention called[36]
Ohio	Const. 1851[37] article XVI, §3	Oct. 10, 1871	For: 264,970[38] Against: 104,231		convention called: Laws of Ohio, 1873, pp. 6-8
		Nov. 3, 1891	For: 99,784 Against: 161,722		
		Nov. 8, 1910	For: 693,263 Against: 161,722		convention called: Laws of Ohio, 1911, pp. 298-303
		1932	For: 853,619 Against: 1,056,855		
		1952	For: 1,020,235 Against: 1,977,313		
Iowa	Const. 1857[39] article X, §3	1870	For: 24,846[40] Against: 82,039		

		1880	For:	69,762	
			Against:	83,784	
		1890	For:	27,806	
			Against:	159,394	
		1900	For:	176,337[41]	
			Against:	176,892	
		1910	For:	134,083[42]	
			Against:	166,054	
		1920	For:	279,652[43]	no convention called[44]
			Against:	221,763	
		1930	For:	140,667[45]	
			Against:	195,356	
		1940	For:	199,247[46]	
			Against:	353,142	
		1950	For:	221,189[47]	
			Against:	319,704	
		1960	For:	470,257[48]	
			Against:	534,628	
Virginia	Const. 1870[49] article XII	1888	For:	3,698[50]	
			Against:	63,125	
Oklahoma	Const. 1907[51] article XXIV, §2	Nov. 2, 1926	For:	47,510[52]	
			Against:	241,040	
		Nov. 7, 1950	For:	159,908	
			Against:	347,143	

State	Const. Provision	Date	Vote	Result when Majority Voted for a Convention
		Mar. 17, 1970	For: 58,223[53] Against: 187,934	
Missouri	Const. 1875[54] article XV, §4	Aug. 2, 1921	For: 175,355[55] Against: 127,130	convention called[56]
		Nov. 3, 1942	For: 366,018[57] Against: 265,294	convention called[58]
	Const. 1945[59] article XII, §3(a)	Nov. 6, 1962	For: 295,972[60] Against: 519,499	
Alaska	Const. 1959[61] article XIII, §3	[62]		
Hawaii	Const. 1959[63] article XV, §2	[64]		
Connecticut	Const. 1965[65] article XIII, § § 2,3			
Arkansas	Const. 1970[66] article XII, §2			
Illinois	Const. 1970[67] article XIV, §1			

[1] In order the more effectually to adhere to the principles of the constitution, and to correct those violations which by any means may be made therein, as well as to form such alterations as from experience shall be found necessary, the general court which shall be in the year of our Lord one thousand seven hundred and ninety-five, shall issue precepts to the selectmen of the several towns, and to the assessors of the unincorporated plantations, directing them to convene the qualified voters of their respective towns and plantations, for the purpose of collecting their sentiments on the necessity or expediency of revising the constitution, in order to amendments. And if it shall appear, by the returns made, that two-thirds of the qualified voters

throughout the state, who shall assemble and vote in consequence of the said precepts, are in favor of such revision or amendment, the general court shall issue precepts, or direct them to be issued from the secretary's office, to the several towns to elect delegates to meet in convention for the purpose aforesaid.

The said delegates to be chosen in the same manner and proportion as their representatives in the second branch of the legislature are by this constitution to be chosen.

[2] Morison, *The Vote of Massachusetts on Summoning a Constitutional Convention, 1776-1916*, 50 MASS. HIST. SOC. PROC. 241, 247 (1917).

[3] No convention was called because the constitution required a two-thirds majority in favor of a convention before one was to be called.

[4] The New Hampshire Constitution of 1792, part II, section 99 provided:

It shall be the duty of the selectmen and assessors of the several towns and places in this State, in warning the first annual meetings for the choice of senators, after the expiration of seven years from the adoption of this constitution as amended, to insert expressly in the warrant this purpose among others for the meeting, to wit: to take the sense of the qualified voters on the subject of a revision of the constitution; and the meeting being warned accordingly, and not otherwise, the moderator shall take the sense of the qualified voters present as to the necessity of a revision; and a return of the number of votes for and against such necessity shall be made by the clerk, sealed up, and directed to the general court at their then next session; and it if shall appear to the general court, by such return, that the sense of the people of the State has been taken, and that, in the opinion of the majority of the qualified voters in the State, present and voting at the said meetings, there is a necessity for a revision of the constitution, it shall be the duty of the general court to call a convention for that purpose; otherwise the general court shall direct the sense of the people to be taken, and then proceed in the manner before mentioned; the delegates to be chosen in the same manner and proportioned as the representatives to the general court: *Provided*, That no alterations shall be made in this constitution before the same shall be laid before the towns and unincorporated places, and approved by two-thirds of the qualified voters present and voting on the subject.

Section 100 provided:

"And the same method of taking the sense of the people as to the revision of the constitution, and calling a convention for that purpose, shall be observed afterward, at the expiration of every seven years."

Articles 99 and 100 were amended in 1964 to provide, in part:

Amendments to this constitution may be proposed by the general court or by a constitutional convention selected as herein provided.

(a) The senate and house of representatives, voting separately, may propose amendments by a three-fifths vote of the entire membership of each house at any session. (b) The general court, by an affirmative vote of a majority of all members of both houses voting separately, may at any time submit the question 'Shall there be a convention to amend or revise the constitution?' to the qualified voters of the state. If the question of holding a convention is not submitted to the people at some time during any period of ten years, it shall be submitted by the secretary of state at the general election in the tenth year following the last submission. If a majority of the qualified voters voting on the question of holding a convention approves it, delegates shall be chosen at the next regular general election, or at such earlier time as the legislature may provide, in the same manner and proportion as the representatives to the general court are chosen. The delegates so chosen shall convene at such time as the legislature may direct and may recess from time to time and make such rules for the conduct of their convention as they may determine.

[5] The election results for the years 1800, 1807, 1821, 1833, 1834, 1838, 1844, 1847, 1850, 1858, 1861, 1863, 1864, 1876, 1884, 1886, 1894, 1896 and 1900 are found in COLBY, MANUAL OF THE CONSTITUTIONS OF THE STATE OF NEW HAMPSHIRE 191-239 (1902).

[6] The election results for the years 1814, 1868, 1870, 1910, 1916, 1924, 1928, 1937, 1946, 1954 and 1962 are contained in a letter from Constance T. Rinden, Assistant Law Librarian, New Hampshire State Library, to Author, October 9, 1968.

[7] Letter from Constance T. Rinden to Author, October 28, 1969, indicates that there are no sources available to indicate when mandatory referenda were submitted from 1833 to the present. She indicates that in 1828 the expediency of taking the sense of the voters was referred

to a committee which never reported it out. The question was not raised in the legislature until 1832, when action was taken. For these reasons, the 1833 referendum and subsequent submissions to the people have all been included in this appendix.

[8] Although the vote taken showed a majority, the Senate and House of Representatives at the June session, 1861, failed to agree upon a bill for a convention. Colby, *supra* note 5 at 218.

[9] The legislature, at the June session, 1865, by joint resolution decided to take no action. *Id.*

[10] That the citizens of this State may have an opportunity to amend or change this constitution in a peaceable manner, if to them it shall seem expedient, the persons qualified to vote for representatives shall, at the general election to be held in the year one thousand seven hundred and ninty-seven, vote also, by ballot, for or against a convention, as they shall severally choose to do; and if thereupon it shall appear that a majority of all the citizens in the State voting for representatives have voted for a convention, the general assembly shall direct that a similar ballot shall be taken the next year; and if thereupon it shall also appear that a majority of all the citizens in the State voting for representatives have voted for a convention, the general assembly shall, at their next session, call a convention, to consist of as many members as there shall be in the house of representatives, to be chosen in the same manner, (at the same places and at the same time that representatives are,) by the citizens entitled to vote for representatives, and to meet within three months after the said election for the purpose of readopting, amending, or changing this constitution. If it shall appear upon the ballot of either year that a majority of the citizens voting for representatives is not in favor of a convention being called, it shall not be done until two-thirds of both branches of the legislature shall deem it expedient.

[11] Executive Papers of Governor James Garrard, Section 1, Box 2, Jacket 8.

[12] No convention was called because the constitution required a second submission in 1798.

[13] Executive Papers of Governor James Garrard, Section 1, Box 2, Jacket 9.

[14] 2 LITTELL, THE STATUTE LAW OF KENTUCKY 211-12 (1810).

[15] Every twelfth year, after this Constitution shall have taken effect, at the general election held for Governor there shall be a poll opened in which the qualified electors of the State shall express, by vote, whether they are in favor of calling a convention or not; and if there should be a majority of all the votes given at such election in favor of a convention, the Governor shall inform the next General Assembly thereof, whose duty it shall be to provide, by law, for the election of the members to the convention, the number thereof, and the time and place of their meeting, which law shall not be passed unless agreed to by a majority of all the members elected to both branches of the General Assembly, and which convention, when met, shall have it in their power to raise, amend or change the Constitution. But as the holding any part of the human creation in slavery or involuntary servitude can only originate in usurpation and tyranny, no alteration of this Constitution shall ever take place so as to introduce slavery or involuntary servitude in this State otherwise than for the punishment of crimes whereof the party shall have been duly convicted.

[16] KETTLEBOROUGH, CONSTITUTION MAKING IN INDIANA 608-10 (1916).

[17] *Id.* at 610-12.

[18] At the general election to be held in the year eighteen hundred and sixty-six, and in each twentieth year thereafter, and also at such time as the Legislature may by law provide, the question, 'Shall there be a Convention to revise the Constitution, and amend the same?' shall be decided by the electors qualified to vote for members of the Legislature; and in case a majority of the electors so qualified, voting at such election, shall decide in favor of a Convention for such purpose, the Legislature at its next session, shall provide by law for the election of delegates to such Convention.

[19] The election results for the years 1866, 1886, 1916, 1936, and 1957 are found in MANUAL FOR THE USE OF THE LEGISLATURE OF THE STATE OF NEW YORK 316, 318, 322, 329, 339, (1967).

[20] At the general election to be held in the year one thousand nine hundred and sixteen, and every twentieth year thereafter, and also at such times as the Legislature may by law provide, the question, 'Shall there be a convention to revise the Constitu-

tion and amend the same?' shall be decided by the electors of the State; and in case a majority of the electors voting thereon shall decide in favor of a convention for such purpose, the electors of every senate district of the State, as then organized, shall elect three delegates at the next ensuing general election at which members of the Assembly shall be chosen, and the electors of the State voting at the same election shall elect fifteen delegates-at-large. The delegates so elected shall convene at the capitol on the first Tuesday of April next ensuing after their election, and shall continue their session until the business of such convention shall have been completed. Every delegate shall receive for his services the same compensation and the same mileage as shall then be annually payable to members of the Assembly. A majority of the convention shall constitute a quorum for the transaction of business, and no amendment to the Constitution shall be submitted for approval to the electors as hereinafter provided, unless by the assent of a majority of all the delegates elected to the convention, the yeas and nays being entered on the journal to be kept. The convention shall have the power to appoint such officers, employés and assistants as it may deem necessary, and fix their compensation and to provide for the printing of its documents, journal and proceedings, choose its own officers, and be the judge of the election, returns and qualifications of its members. In case of a vacancy, by death, resignation or other cause, of any district delegate elected to the convention, such vacancy shall be filled by a vote of the remaining delegates representing the district in which such vacancy occurs. If such vacancy occurs in the office of a delegate-at-large, such vacancy shall be filled by a vote of the remaining delegates-at-large. Any proposed constitution or constitutional amendment which shall have been adopted by such convention, shall be submitted to a vote of the electors of the State at the time and in the manner provided by such convention, at an election which shall be held not less than six weeks after the adjournment of such convention. Upon the approval of such constitution or constitutional amendments, in the manner provided in the last preceding section, such constitution or constitutional amendment, shall go into effect on the first day of January next after such approval.

[21] Because the constitution is self-executing, no legislation was necessary.

[22] The New York Constitution of 1895, article XIV, section 2 was amended on November 8, 1938, and was renumbered article XIX, section 2. This provision states:

At the general election to be held in the year nineteen hundred fifty-seven, and every twentieth year thereafter, and also at such times as the legislature may by law provide, the question Shall there be a convention to revise the constitution and amend the same? shall be submitted to and decided by the electors of the state; and in case a majority of the electors voting thereon shall decide in favor of a convention for such purpose, the electors of every senate district of the state, as then organized, shall elect three delegates at the next ensuing general election, and the electors of the state voting at the same election shall elect fifteen delegates-at-large. The delegates so elected shall convene at the capitol on the first Tuesday of April next ensuing after their election, and shall continue their session until the business of such convention shall have been completed. Every delegates shall receive for his services the same compensation as shall then be annually payable to the members of the assembly and be reimbursed for actual traveling expenses, while the convention is in session, to the extent that a member of the assembly would then be entitled thereto in the case of a session of the legislature. A majority of the convention shall constitute a quorum for the transaction of business, and no amendment to the constitution shall be submitted for approval to the electors as hereinafter provided, unless by the assent of a majority of all the delegates elected to the convention, the ayes and noes being entered on the journal to be kept. The convention shall have the power to appoint such officers, employees and assistants as it may deem necessary, and fix their compensation and to provide for the printing of its documents, journal, proceedings and other expenses of said convention. The convention shall determine the rules of its own proceedings, choose its own officers, and be the judge of the election, returns and qualifications of its members. In case of a vacancy, by death, resignation or other cause, of any district delegate elected to the convention, such vacancy shall be filled by a vote of the remaining delegates representing the district in which such vacancy occurs. If such vacancy occurs in the office of a delegate-at-large, such vacancy shall be filled by a vote of the remaining delegates-at-large. Any proposed constitution or constitutional amendment which

shall have been adopted by such convention, shall be submitted to a vote of the electors of the state at the time and in the manner provided by such convention, at an election which shall be held not less than six weeks after the adjournment of such convention. Upon the approval of such constitution or constitutional amendment, in the manner provided in the last preceding section, such constitution or constitutional amendment shall go into effect on the first day of January next after such approval.

[23] The Michigan Constitution of 1850, article XX, section 2 provided, in part:

At the general election to be held in the year one thousand eight hundred and sixty-six, and in each sixteenth year thereafter, and also at such other times as the legislature may by law provide, the question of a general revision of the constitution shall be submitted to the electors qualified to vote for members of the legislature; and in case a majority of the electors so qualified, voting at such election, shall decide in favor of a convention for such purpose, the legislature, at the next session, shall provide by law for the election of delegates to such convention.

An 1862 amendment did not change the substance of this section.

[24] The election results for the years 1866, 1882, 1898, 1926, 1942, 1958 and 1961 are contained in a letter from Bernard J. Apol, Director of Elections, to Author, September 5, 1968.

[25] No call for a convention was forthcoming because a majority of all the voters in the election did not vote affirmatively as was necessary to require a convention to be held.

[26] The Michigan Constitution of 1908, article XVII, section 4 provided:

At the general election to be held in the year nineteen hundred twenty-six, in each sixteenth year thereafter and at such other times as may be provided by law, the question of a general revision of the Constitution shall be submitted to the electors qualified to vote for members of the Legislature. In case a majority of such electors voting at such election shall decide in favor of a convention for such purpose, at the next biennial spring election the electors of each senatorial district of the State as then organized shall elect three delegates. The delegates so elected shall convene at the State capitol on the first Tuesday in September next succeeding such election, and shall continue their sessions until the business of the convention shall be completed. A majority of the delegates elected shall constitute a quorum for the transaction of business. The convention shall choose its own officers, determine the rules of its proceedings and judge of the qualifications, elections and returns of its members. In case of a vacancy by death, resignation or otherwise, of any delegate, such vacancy shall be filled by appointment by the Governor of a qualified resident of the same district. The convention shall have power to appoint such officers, employes and assistants as it may deem necessary and to fix their compensation, and to provide for the printing and distribution of its documents, journals and proceedings. Each delegate shall receive for his services the sum of one thousand dollars and the same mileage as shall then be payable to members of the Legislature, but such compensation may be increased by law. No proposed Constitution or amendment adopted by such convention shall be submitted to the electors for approval as hereinafter provided unless by the assent of a majority of all the delegates elected to the convention, the yeas and nays being entered on the journal. Any proposed Constitution or amendments adopted by such convention shall be submitted to the qualified electors in the manner provided by such convention on the first Monday in April following the final adjournment of the convention; but, in case an interval of at least ninety days shall not intervene between such final adjournment and the date of such election, then it shall be submitted at the next general election. Upon the approval of such Constitution or amendments by a majority of the qualified electors voting thereon such Constitution or amendments shall take effect on the first day of January following the approval thereof.

This section was amended by initiative petition and ratified at election on November 8, 1960. This amendment provided:

At the biennial spring election to be held in the year 1961, at each sixteenth year thereafter and at such times as may be provided by law, the question of a general revision of the constitution shall be submitted to the electors qualified to vote for members of the legislature. In case a majority of the electors voting on the question shall decide in favor of a convention for such purpose, at an election to be held not later than 4 months after the proposal shall have been certified as approved, the electors of each house of representatives district as then organized shall

elect 1 delegate for each state representative to which the district is entitled and the electors of each senatorial district as then organized shall elect 1 delegate for each state senator to which the district is entitled. The delegates so elected shall convene at the capital city on the first Tuesday in October next succeeding such election, and shall continue their sessions until the business of the convention shall be completed. A majority of the delegates elected shall constitute a quorum for the transaction of business. The convention shall choose its own officers, determine the rules of its proceedings and judge of the qualifications, elections and returns of its members. In case of a vacancy by death, resignation or otherwise, of any delegate, such vacancy shall be filled by appointment by the governor of a qualified resident of the same district. The convention shall have power to appoint such officers, employees and assistants as it may deem necessary and to fix their compensation, and to provide for the printing and distribution of its documents, journals and proceedings. Each delegate shall receive for his services the sum of 1,000 dollars and the same mileage as shall then be payable to members of the legislature, but such compensation may be increased by law. No proposed constitution or amendment adopted by such convention shall be submitted to the electors for approval as hereinafter provided unless by the assent of a majority of all the delegates elected to the convention, the yeas and nays being entered on the journal. Any proposed constitution or amendments adopted by such convention shall be submitted to the qualified electors in the manner provided by such convention on the first Monday in April following the final adjournment of the convention; but, in case an interval of at least 90 days shall not intervene between such final adjournment and the date of such election, then it shall be submitted at the next general election. Upon the approval of such constitution or amendments by a majority of the qualified electors voting thereon such constitution or amendments shall take effect on the first day of January following the approval thereof.

[27] No call for a convention was forthcoming because a majority of all the voters in the election did not vote affirmatively. *See* Stoliker v. Waite, 359 Mich. 65, 101 N.W.2d 299 (1960).

[28] Constitutional provision is self-executing so no enabling legislation was necessary.

[29] At the general election to be held in the year 1978, and in the 16th year thereafter and at such times as may be provided by law, the question of a general revision of the constitution shall be submitted to the electors of the state. If a majority of the electors voting on the question decide in favor of a convention for such purpose, at an election to be held not later than six months after the proposal was certified as approved, the electors of each representative district as then organized shall elect one delegate and the electors of each senatorial district as then organized shall elect one delegate at a partisan election. The delegates so elected shall convene at the seat of government on the first Tuesday in October next succeeding such election or at an earlier date if provided by law.

[30] It shall be the duty of the legislature, at its first session immediately succeeding the returns of every census of the United States, hereafter taken, to pass a law for ascertaining, at the next general election of delegates, the sense of the people of Maryland in regard to the calling of a convention for altering the constitution; and in case the majority of votes cast at said election shall be in favor of calling a convention, the legislature shall provide for assembling such convention, and electing delegates thereto at the earliest convenient day; and the delegates to the said convention shall be elected by the several counties of the State and the city of Baltimore, in proportion to their representation respectively in the senate and house of delegates at the time when said convention may be called.

[31] MARYLAND CONSTITUTIONAL CONVENTION COMMISSION, REPORT 49, 444-45 (1967).

[32] At the general election to be held in the year one thousand eight hundred and eighty-two, and in each twentieth year thereafter, the question, 'Shall there be a convention to revise, alter or amend the constitution,' shall be submitted to the electors of the State, and in any case a majority of all the electors voting at such election shall decide in favor of a convention, the general assembly at its next session shall provide by law for the election of delegates and the assembling of such convention, as is provided in the preceding section; but no amendment of this constitution agreed upon by any convention assembled in pursuance of this article shall take effect until the same shall have been submitted to the electors of this State, and adopted by a majority of those voting thereon.

[33] The Maryland Constitution of 1867, article XIV, section 2 as originally adopted provided, in part:

> It shall be the duty of the General Assembly to provide by Law for taking, at the general election to be held in the year eighteen hundred and eighty-seven, and every twenty years thereafter, the sense of the people in regard to calling a convention for altering this Constitution; and if a majority of voters at such election or elections shall vote for a convention, the General Assembly, at its next session, shall provide by Law for the assembling of such convention, and for the election of Delegates thereto. Each County and Legislative District of the City of Baltimore shall have in such convention a number of Delegates equal to its representation in both Houses at the time at which the convention is called.

The Maryland Constitution of 1867, article XIV, section 2 was amended in 1922 by the addition of article XVII, section 9 which provided:

> The vote to be held under the provisions of section two of article fourteen of the Constitution for the purpose of taking the sense of the people in regard to calling a Constitutional Convention shall be held at the general election in the year nineteen hundred and thirty, and every twenty years thereafter.

Article XVII, section 9 was repealed in 1956 and article XIV, section 2 was amended to provide, in part:

> It shall be the duty of the General Assembly to provide by Law for taking, at the general election to be held in the year nineteen hundred and seventy, and every twenty years thereafter, the sense of the People in regard to calling a Convention for altering this Constitution; and if a majority of voters at such election or elections shall vote for a Convention, the General Assembly, at its next session, shall provide by Law for the assembling of such convention, and for the election of Delegates thereto. Each County, and Legislative District of the City of Baltimore, shall have in such Convention a number of Delegates equal to its representation in both Houses at the time at which the Convention is called.

[34] The election results for the years 1887, 1907, 1930 and 1950 are found in MARYLAND CONSTITUTIONAL CONVENTION COMMISSION, REPORT 65 (1967).

[35] *Id.* at 433-34.

[36] *Id.* at 433-34.

[37] The Ohio Constitution of 1851, article XVI, section 3 provided:

> At the general election, to be held in the year one thousand eight hundred and seventy-one, and in each twentieth year thereafter, the question: 'Shall there be a convention to revise, alter, or amend the constitution?' shall be submitted to the electors of the state; and, in case a majority of all the electors, voting at such election, shall decide in favor of a convention, the General Assembly, at its next session shall provide, by law, for the election of delegates, and the assembling of such convention, as it provided in the preceding section; but no amendment of this constitution, agreed upon by any convention assembled in pursuance of this article, shall take effect, until the same shall have been submitted to the electors of the state, and adopted by a majority of those voting thereon.

This section was amended on September 3, 1912, to provide:

> At the general election to be held in the year one thousand nine hundred and thirty-two, and in each twentieth year thereafter, the question: 'Shall there be a convention to revise, alter, or amend the constitution' shall be submitted to the electors of the state; and in case a majority of the electors, voting for and against the calling of a convention, shall decide in favor of a convention, the general assembly, at its next session, shall provide, by law, for the election of delegates, and the assembling of such convention, as is provided in the preceding section; but no amendment of this constitution, agreed upon by any convention assembled in pursuance of this article, shall take effect, until the same shall have been submitted to the electors of the state, and adopted by a majority of those voting thereon.

[38] The election results for the years 1871, 1891, 1910, 1932 and 1952 are found in Appendix 580, OHIO REV. CODE ANN. (Page 1955).

[39] The Iowa Constitution of 1857, article X, section 3 provides:

> At the general election to be held in the year one thousand eight hundred and seventy, and in each tenth year thereafter, and also at such times as the General Assembly may, by law, provide, the question, 'Shall there be a Convention to revise the Constitution, and amend the same?' shall be decided by the electors qualified to vote for members

of the General Assembly; and in case a majority of the electors so qualified, voting at such election for and against such proposition, shall decide in favor of a convention for such purpose, the General Assembly, at its next session, shall provide by law for the election of delegates to such Convention.

This section was amended in 1964 to provide, in part:

At the general election to be held in the year one thousand nine hundred and seventy, and in each tenth year thereafter, and also at such times as the General Assembly may, by law, provide, the question, 'Shall there be a Convention to revise the Constitution, and propose amendment or amendments to same?' shall be decided by the electors qualified to vote for members of the General Assembly; and in case a majority of the electors so qualified, voting at such election, for and against such proposition, shall decide in favor of a Convention for such purpose, the General Assembly, at its next session, shall provide by law for the election of delegates to such Convention, and for submitting the results of said Convention to the people, in such manner and at such time as the General Assembly shall provide.

[40] Election results for the years 1870, 1880, and 1890 are found in DOCUMENTARY MATERIAL RELATING TO THE HISTORY OF IOWA, 282-83 (B. F. SHAMBAUGH ed. 1897).

[41] 19 IOWA OFFICIAL REGISTER 363 (1901).

[42] 24 IOWA OFFICIAL REGISTER 457 (1911-1912).

[43] 29 IOWA OFFICIAL REGISTER 483 (1921-1922).

[44] SHAMBAUGH, CONSTITUTIONS OF IOWA 281-83 (1934).

[45] Letter from Robert C. Landes, Deputy Secretary of State, to Author, September 6, 1968.

[46] Des Moines Register, January 1, 1961, at 10, col. 6.

[47] 44 IOWA OFFICIAL REGISTER 318 (1951-1952).

[48] 49 IOWA OFFICIAL REGISTER 369 (1961-1962).

[49] The Virginia Constitution of 1870, article XII provides, in part:

At the general election to be held in year 1888, and in each twentieth year thereafter, and also at such time as the general assembly may by law provide, the question, 'Shall there be a convention to revise the constitution and amend the same?' shall be decided by the electors qualified to vote for members of the general assembly; and in case a majority of the electors so qualified voting at such election shall decide in favor of a convention for such purpose, the general assembly at its next session shall provide by law for the election of delegates to such convention: Provided, That no amendment or revision shall be made which shall deny or in any way impair the right of suffage, or any civil or political right as conferred by this constitution, except for causes which apply to all persons and classes without distinction.

The 1887 Code of Virginia numbers this provision as section 2; however, The Acts of the General Assembly of the State of Virginia (1870), The Code of Virginia (1873), and 7 THORPE, THE FEDERAL AND STATE CONSTITUTIONS 3897-98 (1909) treat this and the preceding provision as one article without sections.

[50] W. VAN SCHREEVEN, THE CONVENTIONS AND CONSTITUTIONS OF VIRGINIA, 1776-1966, 15 (1967).

[51] No convention shall be called by the legislature to propose alterations, revisions, or amendments to this constitution, or to propose a new constitution, unless the law providing for such convention shall first be approved by the people on a referendum vote at a regular or special election, and any amendments, alterations, revisions, or new constitution, proposed by such convention, shall be submitted to the electors of the State at a general or special election and be approved by a majority of the electors voting thereon, before the same shall become effective: *Provided*, That the question of such proposed convention shall be submitted to the people at least once in every twenty years.

[52] Election results for the years 1926 and 1950 are contained in a letter from Basil R. Wilson, Secretary, State Election Board, to Author, September 18, 1968.

[53] Letter from Basil R. Wilson, Secretary, State Election Board, to Author, May, 1970.

[54] This section was submitted by initiative and adopted November 2, 1920. The provision states:

The question 'Shall there be a convention to revise and amend the Constitution?' shall be submitted to the electors of the state at a special election to be held on the first Tuesday in August, one thousand nine hundred and twenty-one, and at each general

election next ensuing the lapse of twenty successive years since the last previous submission thereof, and in case a majority of the electors voting for and against the calling of a convention shall vote for a convention, the governor shall issue writs of election to the sheriffs of the different counties, ordering the election of delegates, and the assembling of such convention, as is provided in the preceding section.

[55] OFFICIAL MANUAL STATE OF MISSOURI 478-79 (1921-22).

[56] The convention was called by the governor, as provided by the Missouri Constitution article XV, section 4.

[57] OFFICIAL MANUAL STATE OF MISSOURI 397-98 (1943-44).

[58] The convention was called by the governor, as provided by the Missouri Constitution article XV, section 4.

[59] This section provides, in part:

At the general election on the first Tuesday following the first Monday in November, 1962, and every twenty years thereafter, the secretary of state shall, and at any general or special election the general assembly by law may, submit to the electors of the state the question 'Shall there be a convention to revise and amend the Constitution?'. The question shall be submitted on a separate ballot without party designation, and if a majority of the votes cast thereon is for the affirmative, the governor shall call an election of delegates to the convention on a day not less than three nor more than six months after the election on the question. At the election the electors of the state shall elect fifteen delegates-at-large and the electors of each state senatorial district shall elect two delegates. Each delegate shall possess the qualifications of a senator; and no person holding any other office of trust or profit (officers of the organized militia, school directors, justices of the peace and notaries public excepted) shall be eligible to be elected a delegate. To secure representation from different political parties in each senatorial district, in the manner prescribed by its senatorial district committee each political party shall nominate but one candidate for delegate from each senatorial district, the certificate of nomination shall be filed in the office of the secretary of state at least thirty days before the election, each candidate shall be voted for on a separate ballot bearing the patry designation, each elector shall vote for but one of the candidates, and the two candidates receiving the highest number of votes in each senatorial district shall be elected. Candidates for delegates-at-large shall be nominated by nominating petitions only, which shall be signed by electors of the state equal to five percent of the legal voters in the senatorial district in which the candidate resides until otherwise provided by law, and shall be verified as provided by law for initiative petitions, and filed in the office of the secretary of state at least thirty days before the election. All such candidates shall be voted for on a separate ballot without party designation, and the fifteen receiving the highest number of votes shall be elected. Not less than fifteen days before the election, the secretary of state shall certify to the county clerk of the county the name of each person nominated for the office of delegate from the senatorial district in which the county, or any part of it, is included, and the names of all persons nominated for delegates-at-large.

[60] OFFICIAL MANUAL STATE OF MISSOURI 1179 (1963-64).

[61] If during any ten-year period a constitutional convention has not been held, the secretary of state shall place on the ballot for the next general election the question: 'Shall there be a Constitutional Convention?' If a majority of the votes cast on the question are in the negative, the question need not be placed on the ballot until the end of the next ten-year period. If a majority of the votes cast on the question are in the affirmative, delegates to the convention shall be chosen at the next regular statewide election, unless the legislature provides for the election of the delegates at a special election. The secretary of state shall issue the call for the convention. Unless other provisions have been made by law, the call shall conform as nearly as possible to the act calling the Alaska Constitutional Convention of 1955, including, but not limited to, number of members, districts, election and certification of delegates, and submission and ratification of revisions and ordinances. The appropriation provisions of the call shall be self-executing and shall constitute a first claim on the state treasury.

[62] Letter from Thelma Cutler, Director of Elections to Author, October 21, 1969:

The question of a constitutional convention will appear on the ballot in the 1970 General Election and the voters will vote on the question at that time.

[63] This section provides, in part:

> The legislature may submit to the electorate at any general or special election the question, 'Shall there be a convention to propose a revision of or amendments to the Constitution?'. If any ten-year period shall elapse during which the question shall not have been submitted, the lieutenant governor shall certify the question, to be voted on at the first general election following the expiration of such period. If a majority of the ballots cast upon such question be in the affirmative, delegates to the convention shall be chosen at the next regular election unless the legislature shall provide for the election of delegates at a special election . . . Unless the legislature shall otherwise provide, there shall be the same number of delegates to the convention, who shall be elected from the same areas, and the convention shall be convened in the same manner and have the same powers and privileges, as nearly as practicable, as provided for the convention of 1968.

The only change in this language adopted in 1968 was the reference to the 1968 convention in place of the 1950 convention.

[64] Hawaii held a convention in 1968 pursuant to a 1966 referendum authorized by the legislature. Porteus, *The Constitutional Convention of Hawaii of 1968*, 42 STATE GOV. 97 (1969). Thus another vote is not required in Hawaii until 1976.

[65] The question 'Shall there be a Constitutional Convention to amend or revise the Constitution of the State?' shall be submitted to all the electors of the state at the general election held on the Tuesday after the first Monday in November in the even-numbered year next succeeding the expiration of a period of twenty years from the date of convening of the last convention called to revise or amend the constitution of the state, including the Constitutional Convention of 1965, or next succeeding the expiration of a period of twenty years from the date of submission of such a question to all electors of the state, whichever date shall last occur. If a majority of the electors voting on the question shall signify 'yes', the general assembly shall provide for such convention as provided in Section 3 of this article.

> In providing for the convening of a constitutional convention to amend or revise the constitution of the state the general assembly shall, upon roll call, by a yea vote of at least two-thirds of the total membership of each house, prescribe by law the manner of selection of the membership of such convention, the date of convening of such convention, which shall be not later than one year from the date of the roll call vote under Section 1 of this article or one year from the date of the election under Section 2 of this article, as the case may be, and the date for final adjournment of such convention.

[66] This section is included in the proposed new constitution of Arkansas which will be submitted to the voters at the 1970 general election The section provides:

> A constitutional convention may be called by law, by initiative or by the voters of the State at a general election upon submission of the question by resolution of the General Assembly. If a constitutional convention has not been held or if the question of calling a convention has not been submitted to the voters of the State for a period of twenty years, then the question shall be submitted at the next general election. The General Assembly shall provide by law for the holding of a convention within one year after a majority of those voting on the question approves the calling of a convention.

[67] This section has tentatively been approved by the 1969-70 Illinois constitutional convention. It is subject to being finally included in the convention's draft constitution and being approved by the Illinois voters in December, 1970. The section provides, in part:

> In the year 1990 and every twenty years thereafter the Secretary of State shall submit to the electors at the general election in that year the question of whether a Constitutional Convention should be called, unless there has been a similar submission during the preceding twenty years.
>
> The vote on calling a Convention shall be on a separate ballot. A Convention shall be called if three-fifths of those voting on the question vote in the affirmative.
>
> The General Assembly shall, at the next session following approval by the electorate, provide for the Convention and for the election on a non-partisan ballot of two delegates from each senatorial district. The General Assembly shall designate the day, hour and place of the Convention's initial meeting, which shall be within three months after the election of delegates. The General Assembly shall fix the pay of delegates and officers, and provide for that pay together with all expenses necessarily incurred by the Convention in the performance of its duties.